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A Review of Reviews

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A REVIEW OF REVIEWS

This title may be misleading. The purpose is not to discuss law reviews in general, but rather to consider only that part of legal periodicals that is given over to book reviews. The content of legal journals at present may roughly be divided into three parts; leading articles, criticisms of recent cases, and book reviews. One might say that the leading articles are brief commentaries on different branches of the law, while the recent case notes and book reviews are reviews of decisions and books in which the law is analyzed and developed.

There was a period when digests and encyclopedias were much emphasized. They are still widely used and properly so; but the day has passed when lawyers regard them as useful treatments of different branches of the law itself. Their proper function is to collect the decisions on legal points and present these under headings which make it convenient to find cases quickly. It is in such works as *Wigmore on Evidence, Williston on Contracts* and other treatises covering smaller portions of the law that the practitioner as well as the scholar must look for dependable guidance. The law is made in very large measure by the decided cases; it is also made indirectly though none the less significantly by the writings of our great masters in the law through their criticism of present doctrines and their development of new rules, principles and methods of analysis together with their application to new situations of elements of common law technique which we already have. Surely this is a part of the whole content of the law which can be subjected to constructive criticism with great profit. Not only are text-books on different branches of the law increasingly important both in number and service today, but there are many books of criticism in jurisprudence, legal analysis and legal philosophy which command the attention of courts and lawyers. This demand for legal treatises that set forth and develop the principles of the law will increase regardless of the service that encyclopedias and digests may render in the future. The need for adequate critical review of law books, therefore, will be correspondingly urgent.

Articles and case comments are conceded to be useful in the criticism and development of the law; surely no one would claim as much for book reviews. While articles and notes on cases are often used by legal writers and lawyers in active practice, book reviews are rarely taken seriously either by the reviewer or the reader. A significant result of this is that the poorest reviews are often written by our ablest men. It is not unusual to ask a distinguished lawyer whether he

has read a certain book and receive the answer, "Well, I could hardly say that I have read it, but I glanced it through sufficiently to write a review." Such a remark is considered quite amusing. No one seems to feel that there is anything reprehensible either in such conduct or in such an attitude. No one suggests that it is totally out of keeping with the traditional methods of our profession to take a book with detailed references and authorities, in the preparation of which the author has spent years of labor, and dispose of this book unqualifiedly in an *ex parte* proceeding with a few glib phrases and a clerical record of its make-up, but without any critical consideration of its content or presentation of reasons and authorities for the reviewer's conclusions. The purpose of a law review is to explain the law and contribute to its development; unless the different parts of a periodical directly or indirectly accomplish this purpose, they are not serving their function.

Dean Wigmore, Professor Chafee and others have condemned the quality of many of our modern text-books.[1] It has been said with much justice that not infrequently they are mechanically thrown together by subordinates through the use of head-notes to cases and the piling up of citations to recent decisions, without any intelligent plan or intent to state the law accurately and adequately. Granting that this is true in large measure, what is to be done about it? Are we to go on merely printing brief notices of these books and stating that a book is bad, without any analysis of its content or comparison of its structure with that of other books? Indeed, we must recognize that reviews of books in the field of general literature often give more dependable and detailed analyses than reviews of law books, although we are habitually inclined to speak condescendingly of the layman and to point out that he does not arrive at his conclusions by the expert methods which lawyers employ.

If we are to proceed in our present manner it must be conceded that it is not a lawyer's way of doing things. It would not add to the development of legal principles if a court of last resort should write an opinion after the manner of a book review, "We find the decision of the lower court hopelessly bad and therefore cannot approve it." In writing articles or books our ablest scholars do not state propositions of law upon their own authority; they give evidence and reasons for their conclusions with ample citations to authorities and a discussion of conflicting views. Our courts proceed in the same way. In the entire field of the law it is only the book reviewer who is privileged to ignore the methods of the common law, and to climb Mount Sinai where he announces to the world, "Thus saith the Lord." It is by apply-

[1] See 5 WIGMORE, EVIDENCE (Supp. 1915) vi; (1917) 30 HARV. L. REV. 300 (review by Zechariah Chafee, Jr.).

ing a critical method to the author's work that we may hope to arrive at a just understanding of the content of the book, just as we use our common law technique in estimating the significance of a decision or a statement of legal principles. As a corollary of this, it is submitted also that while our book reviews should not be discursive, they should in themselves be valued contributions to the law in their constructive criticism of legal principles as developed in treatises, just as articles are valued for their discussion of the law as found largely in court decisions.

Seven Sins of Reviewing

It is difficult to enumerate and classify defects in book reviews. Their name is legion. Moreover, reviews contain so many defects that reference to them is of little service in differentiating the very poor reviews from those that are not quite so poor. For purposes of analysis, however, we may distinguish seven serious faults of which three or four are contained in nearly all reviews. They may be called the *Seven Sins of Reviewing,* not for the purpose of having them enter the noble company of the *Seven Deadly Sins,* the *Seven Lamps of Advocacy* and the many other "Sevens" that compose the famous membership of the perfect number; but merely by way of contrast to the mystic number in the *Three Canons of Reviewing* which will be set forth later. The writer's purpose is to give instances of these defects from the work of our ablest scholars in order to substantiate the conclusion that the trouble is fundamental; it is to be found not in occasional instances of poor work, but in the present low standards for all reviewing in legal journals.

1. *No Evidence or Reasons for the Conclusions.* In the issue for January, 1926, of the *Illinois Law Review* appears a review of *Cases on Agency,* by Eugene Wambaugh.[2] This review is especially distinguished by its generous courtesy. The reviewer states that he has used a previous edition of the editor's cases for some twenty years and that he has found it admirable in every way. We can the better value this chivalrous statement when we bear in mind that the reviewer, preeminent in his field, had published a case book on the same subject and that he used the case book by his fellow worker in preference to his own. And this personal testimony is valuable in itself in reviews of case books, since it is difficult to set forth detailed reasons for the teachableness of certain cases in the classroom. Even in a case book, however, the content of a book should be considered. This review is

[2] (1926) 20 Ill. L. Rev. 528 (review by Floyd R. Mechem).

less than a page in length and does not give any detailed consideration to the usefulness of particular cases or the advantages of treating different branches of the subject in the way employed. Thus we have the word of a distinguished scholar to the effect that it is a good book. This is a general pronouncement, not a consideration of the content of the book. And a significant difficulty is that reviewers of less eminence will use the same method.

It is not unusual for law teachers to say, "One can't tell anything about the merits of a case book for teaching purposes until he has used it." If this is literally true, then the review mentioned above is admirable, since only experience is of any consequence, and here we have twenty years of it. On this basis, the reviewer's fiat alone should be enough. It is suggested, however, that those who say that you cannot tell anything of the value of a case book except from experience may speak in hyperbole. When case books were first introduced, the science of their compilation was not yet developed; it may well be that then one had to proceed by trial and error to find the teaching merits of particular cases. Now that our ablest men have been developing case books for more than thirty years, we have ample data, which have been subjected to experience, for purposes of comparing and judging. The footnote references in many case books may well be more helpful in finding and understanding the law on a given subject than the ordinary text-book. Indeed we have the instance of *Ames' Cases on Trusts* which not only delimited that subject as it has been taught in law schools ever since, but through its cases and its footnotes contributed to an extraordinary degree in the development of the law itself. If one declares seriously that detailed review of case books is profitless, then let him say what book on the law of trusts as an original contribution he could review with greater service to the profession than *Ames' Cases on Trusts*. If the merits of case books cannot be estimated at all in the absence of class room experience, what is to be said of that part of case books which causes students to retain them after they leave law school, and even to buy the new editions, for constant use in the active practice of the law? Undoubtedly there are many phases of case books about which one cannot give a definite opinion in the absence of actual use; but the present developed science of their compilation, with exhaustive notes and references, gives us ample data for critical reviews. Further improvement in case books and in law teaching could be served by the critical suggestions of detailed reviews.

2. *Lack of Critical Method.* Good reviews of non-technical books are written by men who have a developed method of literary criticism. For reviewing legal books we already have the technique of the common law to test legal results generally. This technique, however, must

be adapted by the reviewer to the problem of reaching a just estimate of the legal value of a particular book. The *Harvard Law Review* for February, 1920, contained a review of Professor Corbin's edition of *Anson on Contracts*. This review was generally considered to be unfavorable and unfair.[3] Perhaps both of these opinions were due to the extraneous, unsubstantiated assertions it contained. The trouble seemed to be that this reviewer had no method of criticism. What he really undertook to do was to make a hit-or-miss criticism of the present statements of many doctrines in the law of contracts. Right or wrong, his criticisms could only be set forth fairly in an exhaustive book; they did not contribute to an evaluation of the able treatise he was reviewing. Unfortunately the general impression one gets from reading the review is that the reviewer thinks the book defective, when it might be more accurate to say the reviewer doesn't pay much attention to the book, but thinks the entire statement of the law of contracts defective, and uses this occasion to make a number of general criticisms.

3. *Mechanical and Trivial Compilations.* There is a review of *Select Cases and Other Authorities of the Law of Trusts* by Austin W. Scott which illustrates this defect in part.[4] It seems fair to say that the mechanical element is very much to the fore in all book reviews and that it is especially emphasized in reviews of case books. Indeed the reviews of case books seem about the poorest of any reviews now published. They are extraordinarily brief and are almost invariably composed of a listing of the mechanical arrangements of the book, topped off with some unsubstantiated generalities. The review herein referred to is composed largely of these details, but this fact is more nearly justifiable in this instance than in others. *Ames' Cases on Trusts* had hitherto been in almost universal use; Professor Scott's cases are intended to be in large measure a development of the former case book; consequently it was quite helpful for the reviewer to point out in detail the differences as to the number of cases, dates of cases and groupings of cases between the old and the new compilations. It must be conceded, however, that even where this count of cases and dates and chapters is serviceable, it cannot be said that such clerical labors represent professional criticism. It may well be that the numerical elements of the case book will speak for themselves in explaining the character of the work; if they do, this is a gratuity and not the critical contribution of the reviewer.

4. *Treating None of the Content of the Book.* There were a number of admirable reviews of Professor Burdick's *The Law of the*

[3] (1920) 33 HARV. L. REV. 626 (review by John S. Ewart).
[4] (1921) 15 ILL. L. REV. 356 (review by Frederic C. Woodward).

American Constitution.[5] A totally inadequate review, however, appeared in the *Columbia Law Review* for May, 1923.[6] While the other reviews seem to agree that this is the best brief text-book on constitutional law that has been published, we get no evaluation of the book whatever in this review and no fair treatment of its content. The entire review is only one page in length, and half of this is given over to a quotation from the book itself. Instead of discussing the treatment which the book gives to various cases under the due process clause and the commerce clause and other substantial and basic parts of any treatment of constitutional law, the reviewer takes part of the half-page which he devotes to the entire book in order to explain that the reading of the Bible in public schools is not very fully considered and that there is no discussion of the possible ground for a court's approving the use of intoxicating liquor for culinary purposes while not sanctioning it as a beverage. Such comment is the more extraordinary when we find that the book is confessedly a brief account, the caption of the review itself showing that it contains but 687 pages. This is the kind of review that approaches the absolute zero. When we say that it has the defect of not treating the content at all, it is inevitable that such a review must contain the other *Sins* that have been mentioned. This defect, however, is largely true of many reviews. The reviewer starts first to pick some little faults or errors in the book rather than to understand and evaluate its content. If reviewing is to be largely a superficial game of pointing out minor errors, then it is unworthy of professional effort. Any review, as differentiated from a notice or an advertisement, must consider the content of the work itself to the end that the reader may know what the author set out to do and what he has accomplished, with a scientific evaluation of the results of his work. It is not seemly for a reviewer to take a book that is universally recognized for its merit, then ignore its main content, give no opinion of the treatise as a whole, and content himself with jumping about in the search of minor errors or omissions.

5. *Treating only Part of the Content.* This defect is peculiarly prevalent in reviews by English scholars. Perhaps it is indigenous to their method of reviewing, since almost none of their reviews are sufficiently full to permit a fair consideration of the book as a whole. The most they can hope to do in the space given to their reviews is to comment on some part of the book and then give a scholarly evaluation of the entire work. In view of their extreme brevity it would generally be conceded that reviews appearing in the English legal journals are of

[5] See, *e.g.*, (1923) 36 HARV. L. REV. 1046 (review by Felix Frankfurter); (1923) 33 YALE L. J. 218 (review by James Parker Hall).

[6] (1923) 23 COLUMBIA LAW REV. 506 (review by Simeon E. Baldwin).

excellent quality. This characteristic of not treating more than a limited phase of the book, however, may be found in almost any of them. For instance, in the *Law Quarterly Review* for April, 1921,[7] the reviewer takes only one page to cover three separate volumes, and actually treats of only one of these. Of the three books covered, the reviewer selects the *Papers on the League of Nations* by Chief Justice Taft to be distinguished by his reference; and in writing of this book he refers only to its treatment of the Monroe Doctrine. In the course of his remarks the reviewer says, "The pains Mr. Taft has taken to refute the cry that the Monroe Doctrine is in danger will help to explain to English readers how easy it is to raise cries of that kind among a half-educated public whose national pride is all the more sensitive because it is of no great antiquity." Rightly or wrongly, many of our citizens, well educated according to our standards, entertained the opinion that our entry into the League would endanger the Monroe Doctrine. The reviewer seems to indicate that only our "half-educated" condition can explain such stupidity. Under cover of "bluntness" which they like to parade as a virtue, some English reviewers seem to find added pleasure if their criticism is calculated to hit somebody personally as well as to contribute to a professional evaluation of the work.

If we consider this defect in general, it will be perceived that it is a dangerous one, since a half-truth is worse than none at all; and where the reviewer considers only part of the book he may give a misleading impression as to the entire work without involving any lack of fairness or ability in the criticism he has made.

6. *No Expression of Opinion.* From the nature of a review it seems extraordinary that any such writing could fail to give an opinion of the book reviewed. Surely it is to find out the reviewer's opinion of the book that most lawyers read the reviews at all. This does not mean that the reviewer must always give a positive opinion in commendation or condemnation. Of course there are many books whose value can hardly be fixed in advance; in such cases if the reviewer explains the nature of the book as viewed at that time, he gives an adequate opinion when he limits and qualifies his judgment. Thus a negative result which is reached from the facts that are then available may be as valuable as a positive one; but a refusal by the reviewer to give *any* opinion cannot be justified. By writing a review a man fairly advises his readers that it is for their guidance in buying or reading the book itself. If the reviewer reaches no conclusion whatever the reader has perhaps followed a doubtful guide on a futile journey.

[7] (1921) 37 L. Q. Rev. 242 (review by Sir Frederick Pollock).

In the *Illinois Law Review* for April, 1922,[8] is a review which undertakes to dispose of two case books on Contracts in a comment of two pages. As usual in the treating of case books, the reviewer counts pages and dates, along with giving other information that does not involve constructive criticism of the content of the author's work. He does not fix a value for either book or set forth evidence and reasons from which the reader might be able to appreciate the content of these books. The reviewer says, "Only experience with the books in actual class room work can measure their worth as to matters of basic importance with sufficient precision to warrant comparison."[9] If this is entirely true, then there was little occasion for writing this review. We do not have to read a review to know that there are many features of a case book which cannot be judged adequately in advance of class room work. Surely it does not follow because of these possible uncertainties that it is unprofitable to give a qualified opinion about a case book or discuss the relative merits of different features in different books. Where an instructor is reading a review of a new case book largely with the thought of using it in his own classes, he will not be aided by learning from the entire review that he will find out the merits of the book when he has used it.

7. *Personal Feeling and other Indulgences.* This is the last of these sins and the only one that is depressing to consider. The others are incidental to the place book reviews have had in legal periodicals. They are in keeping with the accepted standards of the present time. It may be said at once that for a reviewer in a legal periodical to permit personal feeling to color his work is rare in recent years. This is similarly true in the case of the reviewers who ridicule the author's use of English, or enumerate typographical errors not for the purpose of conveying information to the publisher but for the purpose of minimizing the accomplishment of the author. The same thing may be said for the practice of seizing on some word or phrase in the book as a starting point for a digressive comment by the reviewer himself that has nothing to do with the book involved. There are still some reviews, however, whose usefulness is destroyed because the reviewer employs them to indulge his personal feeling, or his "cleverness," or his patronizing superiority. Thus the review of *Chief Sources of English Legal History* by P. H. Winfield for the March issue of the *Journal of the American Bar Association*[10] will serve adequately to illustrate all three defects.

[8] (1922) 16 ILL. L. REV. 645 (review by Herman Oliphant).
[9] *Ibid.* 645.
[10] (1926) 12 A. B. A. J. 172 (review by John M. Zane).

Dr. Winfield is a specialist in legal history. After receiving a thorough legal education he has spent years of close study of the sources of legal history and is recognized as an authority in both England and America. Thus far his *Chief Sources of English Legal History* has received fourteen reviews, according to the *Index to Legal Periodicals.* Of these fourteen reviews thirteen are highly favorable,[11] while the review here considered is unqualifiedly unfavorable. Among these scholars of widely different training, philosophical outlook and geographical location who have given unstinted praise to this book are Professors Holdsworth, Plucknett and Cross. This unfavorable review of Dr. Winfield's work submits no evidence or detailed reasons for its conclusions, but uses the book merely as a convenience for a general tirade against persons and institutions that are not directly connected with the book itself.

The opening sentence of the review is, "A lecturer at the Harvard Law School who prints such a *phrase damné* as 'not but what' is much like his fellow countryman who dawned on a formal evening affair in knickerbockers, dusty brown shoes and a striped shirt."[12] The reviewer's personal feeling here and the indulgence of his inclination to "be smart" have betrayed him into writing an ungrammatical sentence which is out of keeping with the excellent work he has done on other occasions. "A lecturer at the Harvard Law School" is not a designation of citizenship or nationality. Thus the antecedent for "his fellow countryman" must be the extraneous fact that Dr. Winfield is an Englishman rather than the actual subject of the sentence. May we not ask further, if Dr. Winfield did use an innocent colloquialism, would that be deserving of mention when the review of the entire book is less than one page in length?

Almost every sentence in the review should have been omitted because of erroneous statements, discourtesies, or unfair inferences. For instance, "The chapter on text books seems to be for the most part historical matter much better done by Holdsworth, who has a very close acquaintance with the books themselves."[13] It is not pleasant to discuss the motive which may have lead the reviewer to say things indirectly rather than directly; let it be stated, however, if in this instance he means to say that Dr. Winfield does not have a scholarly acquaintance "with the books themselves," then the statement is untrue.

The practical difficulty with this last sin of reviewing is that it causes the reviewer to neglect the content of the book while he reels

[11] See, *e.g.,* (1926) 39 HARV. L. REV. 405 (review by Theodore F. T. Plucknett); (1926) 24 MICH. L. REV. 320 (review by A. L. Cross); (1926) 42 L. Q. REV. 253 (review by W. S. Holdsworth).

[12] See (1926) 12 A. B. A. J. 172-173. [13] *Ibid.* 173.

along, engaged in various malevolent circumlocutions of his own. We will not go into the depressing work of considering the other instances in this particular review of unfair innuendoes and wild generalizations; let the reader peruse it himself and place his own values upon the intellectual and moral standards involved. Apart from its individual features, this review illustrates that we have not the same standards of professional work in reviews which we have in leading articles and comments on recent cases. This kind of writing crops out only in book reviews. If, therefore, the canons of legal writing preclude such a thing everywhere else, it is important that book reviews should be raised to higher standards or totally omitted.

Three Canons of Reviewing

If we may assume that the *Seven Sins of Reviewing* listed above cover at least some of the main defects in legal book reviews, what is to be done about it? One might answer this question by saying that reviewers should not commit any of the sins mentioned. Such a solution, however, leaves the matter somewhat at loose ends. The Supreme Court has told us that this is a Christian nation; perhaps it is better to put our admonitions positively rather than negatively as Confucius did the Golden Rule. The following *Three Canons of Reviewing* are set forth with brief commentaries upon them not by way of stating a guide for reviewers, but merely to formulate certain elementary standards that all would agree should obtain in this field of writing.

1. *Set Forth the Method, Content and Purpose of the Book Impartially.* The word "method" has been used here because it implies the scheme of development of legal principles and analytical treatment which the author had in mind. We might have referred to the structure or plan with perhaps equal advantage. The method of development in writing on a legal subject may involve a large part of the merit of the entire work. Not infrequently reviewers either make no reference to that part of the author's labor or criticise the book in a way that indicates they have neither considered nor understood the author's plan in the first place. From the point of view of improvement in our text-books especially, it would be fortunate if the plan and structure of the book were first understood by the reviewer to the end that he might make helpful criticisms of them later in his review. This is in keeping with the undertaking of the American Law Institute to provide for a classification of our law. Surely each text-book must involve a classification for the purpose of treatment and the value of the content of the book is largely dependent on the initial analysis and arrangement which the author uses.

It is important for a reviewer to tell his readers of the book's content impartially and adequately. It appears from reviews generally that the reviewers do not try to set forth the content of the book even in brief form; where the content is referred to at all it is usually introduced in a trivial way as a point of departure for the reviewer to emphasize minor defects or omissions without a consideration of the matter for its own sake. We must remember, of course, that the place for an editorial is on the editorial page, not by way of coloring the actual information to be presented to the reader. The place for criticism of the content is later in the review, after the reader is in possession of the basic structure and substance of the book which he can use in formulating his own judgments of the reviewer's opinions. Not only from the point of view of the readers, but equally from the point of view of the despised author who has perhaps spent years of labor on his book only to have it glibly disposed of in an *ex parte* proceeding, we must be sure that the reviewer has set forth impartially what the author has done before he undertakes to praise or condemn that accomplishment. The presentation of the actual content of the book is of the first importance in guaranteeing that the author will have the semblance of a fair trial before the members of his profession; it is equally important in order that the readers may orient themselves sufficiently to have the materials and the background for an independent judgment of the reviewer's conclusions and a tentative opinion of the book.

Finally it is essential to any review that the purpose of the author as indicated in his book shall be made known. It makes a lot of difference in useful criticism whether you proceed on the assumption that a certain book is an exhaustive treatise when in fact it is confessedly a brief account for ready reference. The place of the book in connection with other books in the same field is significant, since the author may have intentionally delimited the scope of his book in order that it might cover certain matters which were not adequately covered in other books. Such a situation might readily cause the author to construct his book on lines that would not be adequate or logical otherwise.

2. *Give a Detailed Critical Consideration of the Content of the Book.* It is in this second part of a review that we should look forward to finding a critical analysis not only of the isolated points considered in the book but also of the legal principles that are developed through perhaps several divisions of the book and which tend to influence the growth of the law itself. This means a great deal more than to say that a certain case should have been cited or that a certain rule is inadequately treated. A review of this latter type does not fairly involve a consideration of the author's work, because the reviewer does not discuss it ex-

cept to advance some opinion of his own in contradiction or in supplement to the book itself. Such a review also implies detailed references to the content of the book, comparison of like treatments in other books and citations to decisions and authorities for the statements made. The author has submitted numerous authorities for his statements; in fairness to him as well as to the independent judgment of the reader it is important for the reviewer to give footnote references for disagreeing with what the author has done.

This matter of analyzing the substance of the book may perhaps fall into two divisions: (1) a consideration of the content of the book in the light of the decisions of our courts and the principles of the law generally; (2) a criticism of the development of legal principles in this book compared with the same principles as developed in other treatises. This second function is now very generally neglected. While it is rare indeed to find a book review that makes any contribution in this way, may we not say that it is of vast importance and involves in large measure the permanent value of reviewing?

It is not to set forth isolated points in the law that a valuable treatise is written. It may be well enough for a hack-writer merely to string together a series of sententious expositions of unrelated rules. The work of the legal scholar in writing a treatise on some branch of the law in which he sets forth its history and explains its principles, with the use of authorities for their value rather than for their numerical impressiveness, is as different from the work of a mechanical compiler as is the majesty of the developed system of the common law today from the tariffs for personal injuries and other fixed approximations of the primitive law. Are we to have no criticism and appreciation for the work of the great builders of the law who through their treatises are developing the principles that courts will later enunciate and stamp with their approval? It is not enough to say merely that such a principle is explained in the book. The process and technique in the development of principles are the significant considerations. This is a field worthy of the best efforts of a scholar. It is a work which none but the ablest scholars can do. The reviewer performs his useful function in other phases of his review; in this part he rises to a plane comparable to that of the writer of valuable artieles, the judge on the bench, and the author of an original treatise. Other phases of book reviews are perhaps temporary; they are to advise the members of the profession of today about the value of books for use in the practice and in the training of lawyers. But where the reviewer compares and criticises the development of legal principles, he contributes to the development of those principles himself and his work becomes a part of the permanent content of the

law. It is especially this phase of the reviewer's work that should enlist all his professional skill and cause him to use all the tools of our common law, to the end that the book review may properly become an enduring member of the company of other forms of legal scholarship.

This implies a great deal more than we have today. For instance there are many treatises on the law of torts or parts of that general subject. In the reviews of these books, however, we do not find a careful explanation and analysis of how the author sets forth the doctrine of proximate cause, with a comparison between his treatment and that of other writers in the same field. Thus the reviewer should strive to find the point of departure that the author has taken and how and why it is that he works out a development of the principle which is divergent from the course that other writers in developing the same principle have taken. It is well known that various books on torts are published from time to time and that they gaily continue to set forth different versions of the same doctrine without any serious effort to explain or include conflicting doctrines. One text-book often will develop a principle according to one school of thought and refer to contradictory versions only by incidental phrases or colorless references in the footnotes. No wonder that our leading scholars speak condescendingly of text-books. No wonder that our judges are rather slow in recognizing the significance of anything but a prior decision. The technique of the common law that goes to the building of our great court decisions is not used in the criticisms of our treatises; hence in large measure the treatises themselves are not developed and improved. It is the methods of the common law that work for the alleviation of error in the decisions of our courts; the same methods will aid in achieving the same results if applied to our legal treatises.

3. *Give a Weighted Conclusion.* Of course the first duty is to give some conclusion, and, as pointed out in the sixth *Sin of Reviewing,* it is not infrequent now-a-days for the reviewer to give no conclusion at all. Here again, however, it is important for the reviewer to consider the whole content of the book and to let his conclusions be varied and modified according as they apply to the several separate parts of the book. Thus for the reviewer to say summarily that it is a good book or a bad book without setting forth reasons which are based upon evidence already presented, is not helpful. In law examinations it is usual for the instructor to explain to his students that answers without reasons are valueless; yet the same teacher may proceed in this futile way when he undertakes a book review.

If the book involved is of any considerable importance, a general conclusion is surely insufficient. There must be different opinions about

the content of at least some of the separate divisions of the book; it is axiomatic that all parts of the book cannot be equally good or bad and so deserve an unqualified rating. As mentioned hitherto, it is often proper for the reviewer to give a conclusion in qualified form because of the many uncertainties that later experience with the book may be required to resolve. A conclusion with these probable qualifications and delimitations is essential to every review. If the reader has first received a fair survey of the content of the book and then a detailed consideration based on authorities and comparisons with other works, he will be more anxious to find and to estimate the conclusion of the reviewer if the conclusion itself is applicable to the book in its significant parts as well as in its entirety, and if the conclusion is supported by reasoning which has been predicated on the evidence already set forth.

Conclusion

In carrying out these suggestions in practice, might it not be that if a distinction were made between "reviews" and "notices" it would make this part of our legal periodicals more useful? Thus the careful criticism of any book of consequence would be placed as a "review" while there would be "preliminary notices" of other books.[14] These notices would be nearly as full as most reviews are today. They would appear in the case of all books of small importance and as preliminary treatments of significant books. Perhaps the "review" could be in regular type or in somewhat different type from the small type that would be used for the "notices." The heading for this division might be "reviews" rather than "book reviews." No one speaks of the masterpieces of Saint-Beuve as "book reviews," although this depressing term is technically accurate. The name of the book might be the title of the review, while the details about the pages and the publisher could go in a footnote where they belong.[15] The name of the reviewer should always

[14] Our present practice of reviewing only "books"—and usually this means books donated for reviewing purposes—seems unfortunate. It would be of great value to professional readers and serviceable to the development of the law if there appeared at least "notices" of new legal periodicals that were published, reports of governmental investigations, reports of private commissions and surveys involving the administration of the law, and important reports of certain organizations, such as a number of the more considerable publications of the American Judicature Society. The busy lawyer cannot hope to read all of this important product from governmental and private agencies; it would be a real service for him to have current notices that covered it.

[15] It also seems that the price of the book should appear in the footnote. The price is always given in the headnotes in the English reviews. Surely the price is useful information for the reader; it could appear in the footnote quite appropriately.

be given.[16] Surely it is fair to use these or other devices that are calculated to give to the products of professional criticism an outward form and attractiveness similar to that which articles now enjoy.

We have already referred to the statement by Dean Wigmore in the course of his search for an explanation of the present paucity of valuable legal treatises:

> "A sound and perhaps a main explanation is the judges' indifference to legal science. This indifference they share with most of the profession. What they respect is mere precedent,—a prior decision, and the latest decision. This respect is, in turn, sensed by the authors. What ought to be a genuine juristic treatise is degraded to a mere collection of precedents,—preceded by sentences beginning 'Some courts, indeed, hold, etc.,' and 'It has been decided, however, on the contrary, etc.' The judges measure a treatise by its value as a digest. By thus setting a standard of value, they discourage the careful, helpful thinkers and encourage the mere compiler. The progressive development of the law by analysis and construction is stifled."[17]

May it not be said that the inadequacy of our book reviews contributes to this dearth of good books which Dean Wigmore deprecates? May it not reasonably be expected, if legal writers could anticipate thorough and appreciative criticism of their work, that the legal scholar would have more incentive for the years of careful labor that may be necessary for the production of a good book and the hack-writer would have far less success than he has now, since his work would not be condemned in general terms, like many good books at present, but convincing evidence and analysis would be brought forward to prove its deficiencies?

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[16] The practice of printing only the initials of the reviewer which now obtains in English legal periodicals seems unfortunate. The review should be of such quality that it could properly be listed among the permanent writings of the reviewer; and if his name is given in the *Index to Legal Periodicals* it makes ready reference more convenient for the reader.

[17] See 5 WIGMORE, EVIDENCE (Supp. 1915) vi.